

CITY COUNCIL PROCEEDINGS

Tuesday, January 4, 2011

1. CALL TO ORDER AND ROLL CALL

Mayor Osborne called the regular January 4, 2011 council meeting to order at 6:06 p.m. in the council chambers.

Those present were: Mayor Osborne, Deputy Mayor Wilson and Council Members Ageton, Appelbaum, Becker, Cowles, Gray, Karakehian and Morzel.

Mayor Osborne announced that the annual recruitment for Boards and Commissions was scheduled to kick off on January 5, 2011 with a February 17 deadline to apply.

2. PUBLIC PARTICIPATION and COUNCIL/STAFF RESPONSE – 6:07 p.m.

1. Jim Rianoshek, Executive Director of Attention Homes (pooling time with Brenda Logan and Allison Disbrow) asked Council to partner with them to create a strategic plan to address the city's runaway and homeless teen issue. He did not feel the 10-year plan to address homelessness appropriately addressed the needs for youth.
2. Judd Golden spoke to consent item 3E regarding automated enforcement technology. He expressed that license plate technology collects much more information than typical photo red light and he raised concern about data mining. If this were approved he hoped there was a process to purge the data.
3. Karey Christ-Janer spoke to Boulder's Energy Future and expressed concern about a potential ballot measure. She supported a power authority as the ideal solution. She also supported Boulder becoming an energy provider. Localized energy generation would be the wave of the future.
4. Robert Sharpe spoke to the on-going community opposition to the Jefferson Parkway issue and expressed his disappointment in the Council and County Commissioners in dropping their opposition in favor of the \$5 million land deal. He hoped Council would reconsider or that a referendum would overturn the beltway development. He then spoke to the new government building on 63rd near Valmont Butte (the Brickyards) and thought the building had desecrated the landscape.
5. Martin Ian Spector spoke to the proposed redevelopment of Diagonal Plaza suggesting Council should think outside of a big box development. He suggested a large building surrounding an atrium where perhaps many restaurants and stores could be placed with a farmers market in the middle. This would further cultivate local businesses and a sense of community.

City Manager Response:

None.

City Attorney Response: - 6:32 p.m.

City Attorney Tom Carr spoke to consent item 3E and emphasized that he had worked with Judd Golden on the issue of the enforcement cameras. He indicated parking enforcement was working on a policy for records retention. The current ordinance allowed for the data to only be used for

law enforcement purposes unless subject to a subpoena.

City Council Response: - 6:34 p.m.

Council Members Appelbaum and Morzel spoke to consent item 3E and asked staff to find out who would actually own the images and data. Council Member Morzel asked if a clause could be added in that would allow the data to be purged on a regular basis and/or immediately after it was utilized for the specific enforcement matter. She suggested the following sentence be added in the ordinance:

"Images taken by license plate recognition technology that are determined to not be evidence required to prove a parking violation shall not be released or be permitted to be inspected or copied and shall be purged on a regular schedule adopted by the city manager."

Council Member Gray responded to Mr. Sharpe noting the building on 63rd was the Special Transit facility.

Mayor Osborne asked for an information packet item on the homeless youth issue and how that tied into the 10-year homeless plan.

3. **CONSENT AGENDA:** - 6:40 p.m.

- A. **CONSIDERATION OF A MOTION TO APPROVE THE DECEMBER 2, 2010 SPECIAL CITY COUNCIL MEETING MINUTES.**
- B. **CONSIDERATION OF A MOTION TO APPROVE THE DECEMBER 7, 2010 REGULAR CITY COUNCIL MEETING MINUTES.**
- C. **CONSIDERATION OF A RESOLUTION CONCERNING THE PROPOSED CITY OF BOULDER (ACTING THROUGH ITS WATER UTILITY ENTERPRISE AND SEWER UTILITY ENTERPRISE) WATER AND SEWER REVENUE REFUNDING BONDS, SERIES 2011, IN A PRINCIPAL AMOUNT NOT TO EXCEED \$19,500,000, AUTHORIZING THE OFFICIAL NOTICE OF BAND SALE WITH RESPECT TO SAID SERIES 2011 BONDS; PRESCRIBING CERTAIN DETAILS CONCERNING SAID PROPOSED SALE AND SAID SERIES 2011 BONDS; APPROVING THE FORM OF A PRELIMINARY OFFICIAL STATEMENT; AND PROVIDING THE EFFECTIVE DATE OF THIS RESOLUTION.**
- D. **SECOND READING AND CONSIDERATION OF A MOTION TO ADOPT ORDINANCE NO. 7777 AMENDING STANDARDS RELATED TO BICYCLE PARKING AND BICYCLE RENTAL STATIONS ON PUBLIC AND PRIVATE PROPERTY BY AMENDING CHAPTERS 8-6, "PUBLIC RIGHT-OF-WAY AND EASEMENT ENCROACHMENTS, REVOCABLE PERMITS, LEASES AND VACATIONS," 9-7, FORM AND BULK STANDARDS," AND SECTIONS 9-9-6 "PARKING STANDARDS," AND 9-9-21, "SIGNS," B.R.C. 1981; AND SETTING FORTH RELATED DETAILS.**

- E. **INTRODUCTION, FIRST READING AND CONSIDERATION OF A MOTION TO ORDER PUBLISHED BY TITLE ONLY AN ORDINANCE AMENDING SECTION 5-7-4, "POSSESSION AND SALE BY MINORS UNLAWFUL," B.R.C. 1981, RELATING TO PRIVACY OF RECORDS, AND SECTION 7-4-74, "AUTOMATED ENFORCEMENT SYSTEMS," B.R.C. 1981, RELATING TO PROTECTION FROM DISCLOSURE IMAGES OBTAINED THROUGH AUTOMATED LICENSE PLATE RECOGNITION TECHNOLOGY, AND SETTING FORTH RELATED DETAILS.**

Council Member Ageton moved, seconded by Morzel to approve Consent items 3A through 3E. The motion carried 9:0.

4. **CALL- UP CHECK IN:** None. - 6:43 p.m.

ORDER OF BUSINESS

5. **PUBLIC HEARINGS:**

- A. **INTRODUCTION, FIRST READING AND CONSIDERATION OF A MOTION TO ORDER PUBLISHED BY TITLE ONLY AND ORDINANCE AMENDING SECTION 8-2-13, "DUTY TO KEEP SIDEWALKS CLEAR OF SNOW," B.R.C., 1981. – 6:43 P.M.**

Jeff Arthur, Code Enforcement Supervisor, provided a brief presentation on the item and noted that a compliance deadline posting was placed on the website after the last snow. Ten tickets were issued for the last snow storm and were targeted at repeat offenders. Letters were also sent to prior offenders from the previous year indicating that no warnings would be issued prior to ticketing.

He then spoke to whether parking services support could be utilized to assist with snow enforcement. He noted staff would be exploring many areas where environmental enforcement and parking enforcement responsibilities might overlap and staff would also need to consider any budget implications.

Mr. Arthur then spoke to the compliance deadline options. When council considered the matter in November the compliance deadline was switched from midnight to 5 a.m.

Council Member Appelbaum clarified the 'snow ended time' would be called the night before. He also asked if commercial areas were an issue. Mr. Arthur reported that non-residential areas did not seem to be an issue in Boulder.

Council Member Morzel raised concern that many of the school sidewalks weren't shoveled the day after the storm. She asked what kind of communication was being done with BVSD. Mr. Arthur responded that snow removal was the responsibility of each school's maintenance department. Enforcement was difficult due to the fact that they were a state entity but staff could conduct some pro-active communication with the school district.

Council Member Gray commented that Monday evening, the surface parking lot across from Buchanan on The Hill had not been cleared. She thought the city was responsible for that lot. She stressed the importance of the City being in compliance along with other Boulder entities.

Council Member Ageton spoke to the "Findings and Notice" section of the ordinance on page 8 of the memo. She asked how it would be determined if there were a hazardous condition. She thought it felt inconsistent with section d on page 9.

The public hearing was opened at 7:05 p.m.:

1. Tim Wheat with the Center for People with Disabilities asked council to keep the current timing in place for the current snow season. The most important thing was getting people to work and school in the mornings and he was concerned about a delay negatively impacting the disabled community.
2. Mike McCarty, a disabled resident living near 3rd and Pearl, commented that the sidewalks were cleared sporadically depending on who was responsible. The curb cuts then get filled back in from snow plows. He felt it was important for the city to participate as an integral partner in ensuring sidewalks get plowed. He suggested increasing the fines as an incentive to get the walks cleared.

There being no further speakers the public hearing was closed.

Council Member Appelbaum moved, seconded by Ageton to introduce and order published by title only Ordinance No. 7779 amending section 8-2-13, "Duty to Keep Sidewalks Clear of Snow," B.R.C., 1981. The motion carried 9:0 at 7:35 p.m.

Deputy Mayor Wilson suggested staff get more proactive so that timely enforcement could take place. He commented that additional plowing and sidewalk removal would have large funding and resource impacts on the city.

Council Member Ageton expressed that she would support the item. She noted that the 24 hour period was more reasonable particularly with the abatement process.

Council Member Appelbaum reiterated the key was how enforcement was handled and the enforcement protocol was reasonable. The goal was to make the ordinance as simple and straightforward as possible. He agreed staff should be proactive with the school district and thought garbage trucks and mail trucks along with City plows probably all contributed to pushing snow back up onto sidewalks. A common sense approach was needed for these circumstances. The sooner residents are notified of the changes, the better.

Council Member Morzel raised concern about homes that didn't face Table Mesa but rather were adjacent to or abut the sidewalk and whether any discussion had taken place about changing the city's policy or approach. Mr. Arthur commented that a few arrangements had been made around town but city resources would need to be utilized and the areas prioritized.

Council Member Gray asked how the complaints that were called in were prioritized. Mr. Arthur noted that this year, officers went out to a randomly selected neighborhood in the morning and spent the afternoon addressing complaints so it was a split approach.

Council Members Becker, Cowles and Osborne all commented that they liked the Fort Collins model.

B. INTRODUCTION, FIRST READING AND CONSIDERATION OF A MOTION TO ORDER PUBLISHED BY TITLE ONLY AND ORDINANCE AMENDING CHAPTER 6-14, "MEDICAL MARIJUANA" B.R.C. 1981, AND SETTING FORTH RELATED DETAILS. – 7:35 P.M.

City Manager Brautigam provided a brief introduction to the item.

Mishawn Cook, Deputy City Clerk for Licensing, provided an overview noting that 117 medical marijuana license applications had been filed since the ordinance went into effect in June of 2010. She then provided a status update of pending applications indicating that nine of those had moved from tier one into tiers two and three. The overall outcome should be to achieve the same level of compliance for these types of businesses as for other types of businesses. The city's goal should be to have approvals or denials for all 117 applications by July 1 of 2011 to ensure timely notice to the state.

Jeff Arthur then spoke to a number of enforcement issues. He noted that it was difficult for enforcement to establish the exact number of businesses operating without a pending medical marijuana business license. Initially the enforcement had focused on businesses with sales tax licenses but no medical marijuana licenses. The city had established several test cases to work out protocol and ordinance issues. He indicated that 62 cease and desist letters to businesses operating without a pending license had been sent out. He spoke to various enforcement challenges which included:

- Time intensive investigations, particularly for non-storefront businesses
- Grow operations which are not staffed around the clock and are difficult to identify from the outside
- Officers must be able to access the premises, confirm there is marijuana on site and determine if the location is a licensed establishment

City Manager Brautigam then spoke to the resource impacts which involved numerous city departments. Short-term and long-term impacts were being assessed.

City Attorney Tom Carr then spoke to the need for the amended ordinance which was outlined in the presentation handout.

Council Member Cowles asked how staff would regulate a grow operation if the location were confidential. City Attorney Carr noted the locations were not confidential to the City. He did not recommend requiring the disclosure of the location in the City's ordinance.

Deputy Mayor Wilson asked what the Police department was seeing so far in terms of illegal activity around the dispensary operations. Police Chief Beckner commented that the Police Department had not seen a lot of serious violations or activity to date. He commented that policing medical marijuana dispensaries was still a learning process for the Police Department. Deputy Mayor Wilson then asked about the need for staffing versus the revenue coming in via sales tax. City Manager Brautigam responded that she could not say with any certainty whether all the sales tax was being captured. A few more auditors had been added and this phase would be coming soon. She thought the fees charged and sales tax collections would allow the City to staff appropriately.

Council Member Ageton asked if medical marijuana seeds were included in the definition. Kathy Haddock responded that seeds were an exception in the definition. It was then clarified that transportation of plants could only be transferred between the corresponding cultivation facility to the dispensary.

Council Member Karakehian suggested perhaps council should consider a maximum, finite number of local licenses. He would like to know what capacity exists among the city's zoning areas.

Finance Director Bob Eichem noted that, currently, staff was developing seminars and auditing procedures. In the next 5 to 6 months staff would be contacting and auditing the current businesses. There had been very little use tax remitted. He expected the licensed establishments would begin to report the unlicensed establishments.

Council Member Cowles clarified that some banks under federal regulations would not offer accounts to medical marijuana businesses. Mr. Eichem then clarified that the state laws around accounting would probably come out much more detailed and staff would return to Council when necessary. Mr. Cowles then commented that the confidentiality of locations had a non-competitive aspect. He then asked, in terms of the ratio of plants to mature plants, when did the plant cease to be a plant? Kathy Haddock responded that in order to transport, it had to be in useable form and the ordinance further required that packaging be done at the cultivation center. In addition, a dry plant would no longer be a live flowering plant.

Kathy Haddock further clarified that the ordinance clearly states what record keeping is required of businesses so they can be adequately prepared for an audit.

Council Member Appelbaum asked how staff treated small liquor stores in the same PUD zones that were impacting some of the medical marijuana facilities. Staff responded liquor stores were treated as retail establishments.

Mayor Osborne commented she had the same concerns as Council Member Appelbaum and additional information would be helpful at second reading as it was in essence a new use. It would be helpful to understand what the differences were and whether it could be simplified.

Tom Carr cautioned that the City may want to pay attention to the proliferation of grow operations in Boulder as other cities aren't allowing it. At some point, the City may consider looking at ways to get revenue to offset the costs of having the grow operations in Boulder.

Council Member Ageton asked whether staff could find any data from other Colorado municipalities or across the nation that had any experience managing medical marijuana establishments. Staff would look into this for second reading.

The public hearing was opened:

1. Jason Lauve with New Options Wellness indicated there was potential to see more patients as the population ages. Cannabis research was revealing more ailments that medical marijuana can help address. He spoke to a medical marijuana facility called Flower of Life located in the North Boulder shopping center and noted that it had a liquor store in the same area and was in a residential PUD zone.
2. Carl Savitz, operator of Flower of Life, suggested he was concerned about the possibility of having to close down and asked Council to consider allowing an exception to help keep them open.
3. Kelly Moore with Flower of Life spoke to their business objectives and the contributions they make to the local economy.
4. Evan Anderson spoke to the purpose of zoning laws and the state's view of measuring the boundaries. He suggested Council adopt the state's language and set its own distances. He then asked for February and March deadline extensions as the original deadlines did not allow enough time for a business to be established. He also asked whether this was a recreational intoxicant or a pharmaceutical drug. Pharmaceutical drugs cannot be taxed.
5. Steve Keenan spoke to the need to address patient's rights. State agencies requesting information about patients was a violation of the HIPPA laws. He suggested the city put a bond up to start a marijuana credit union in Boulder.
6. Jodi Sahi, patient and member of the Flower of Life, urged council to help keep Flower of Life open.
7. Jennifer LaBrecque with New Options Wellness indicated they are located in a PUD area and encouraged the passage of agenda item 5B particularly regarding the zoning exceptions in the ordinance.
8. Tom Luecke also urged council to allow the exemptions contained in the ordinance.

There being no further speakers the public hearing was closed at 9:05p.m.

Council Member Cowles moved, seconded by Morzel to introduce and order published by title only Ordinance No. 7780 amending Chapter 6-14, "Medical Marijuana," B.R.C. 1981, and setting forth related details. The motion carried 9:0 at 9:11 p.m.

Council Member Morzel noted she had visited the Flower of Life and was impressed by their facility.

Mayor Osborne clarified with the City Attorney that the City's measurement of distance between dispensaries and schools was rational and complied with state law.

Council Member Becker clarified that the City would require all owners be disclosed regardless of percent of ownership so that the felony conviction issue could be verified for compliance.

Council Member Becker received a nod of five from Council to ask city staff to pursue regulation of medical marijuana advertisements and disclosure and disclaimers.

Mayor Osborne clarified the ordinance would go into affect 30 days after the date of final passage.

C. CONSIDERATION OF A LANDMARK ALTERATION CERTIFICATE FOR THE ON-SITE RELOCATION AND REHABILITATION OF THE CONTRIBUTING GARAGE AT 702 PINE STREET, PER SECTION 9-11-16 (C) OF THE BOULDER REVISED CODE (HIS2010-00200). THIS HEARING WILL BE HELD UNDER THE QUASI-JUDICIAL HEARING PROCEDURES OF THE BOULDER REVISED CODE. OWNER: ERIC KRAMER. APPLICANT: CARLO PERSICHETTI, CP WEST. – 9:25 P.M.

City Clerk Lewis swore in all participants in the hearing.

Ex-parte communications:

Council Member Gray disclosed that she had read the Landmarks Board packet online before the first hearing and she and Mayor Osborne had driven by the site.

Council Member Ageton also drove by the property.

James Hewat provided a brief introduction of the item.

The applicant, Carlo Persichetti and Gillian Lewis urged Council to support the Southeast location. He also noted the majority of correspondence council received from his neighbors also supported the southeast location.

Lisa Podmajersky, Chair of the Landmarks Preservation Advisory Board commented that the majority of the Board was focused on how extremely unique the site was and concluded that re-establishing the historical integrity

was extremely important. The Board felt the southwest location best fit the conditions of approval.

Mark Gerwing with the Landmarks Board spoke to the minority view which was that the southwest location didn't allow the best garage use and access.

Abby Daniels with Historic Boulder indicated the preservation committee members had discussed the application and the majority had felt the Southeast location was the better option.

The public hearing was opened at 10:18 p.m.

1. Jason Mendelson supported the application and urged council to approve the southeast location.

There being no further speakers the public hearing was closed.

The applicant, Carlo Persichetti, then provided a brief rebuttal statement again urging for the southeast location.

Council Member Becker moved, seconded by Gray to approve a landmark alteration certificate to relocate and rehabilitate the garage at 702 Pine Street in the Mapleton Hill Historic District as detailed on drawings dated 11.04.2010 and identified as option A1, the southeast location in that the proposal meets the requirements in Section 9-11-18, B.R.C. 1981, subject to the conditions on page 4 of the memo.

Conditions for Landmark from page 4 of the agenda memo:

1. The applicant shall be responsible for constructing the house in compliance with the approved plans identified as "A-1 – Alternate Carriage House Location" dated 11.04.2010, except as modified by these conditions of approval.
2. Prior to submitting a building permit application and final issuance of the Landmark Alteration Certificate, the applicant shall submit the following, subject to the final review and approval of the Landmarks design review committee, details regarding the methodology for relocation, foundation, and revised plans, all to ensure that the approval is consistent with the *General Design Guidelines* and the *Mapleton Hill Historic District Guidelines* and the intent of this approval.

The motion carried 8:1; Appelbaum opposed.

Council Member Ageton moved, seconded by Gray to suspend the rules and continue the meeting at 10:30 p.m.

6. **MATTERS FROM THE CITY MANAGER:**

None.

7. **MATTERS FROM THE CITY ATTORNEY:**

None.

8. **MATTERS FROM MAYOR AND MEMBERS OF COUNCIL:**

A. **ANNUAL COUNCIL COMMITTEE APPOINTMENTS DISCUSSION AND RATIFICATION. – 10:32 P.M.**

The following Committee appointments were made:

KC Becker would be a regular member of the CML Policy Committee with Carl Castillo as alternate

Eric Stone would replace Matt Jones on the Rocky Flats Stewardship Council.

Lisa Morzel would come off of the CU/City Oversight Group

Mayor Osborne was removed as alternate on the Urban Drainage and Flood Control District

Matt Appelbaum would replace Crystal Gray on the evaluation committee.

Macon Cowles would be the alternate for the Yateras, Cuba Sister City Committee.

Council Member Gray moved, seconded by Wilson to ratify the committee assignments.

9. **PUBLIC COMMENT ON MATTERS:**

None.


10. **FINAL DECISIONS ON MATTERS:** Action on motions made under Matters.

Vote was taken on the motion to ratify the committee assignments. The motion carried 9:0.


11. **ADJOURNMENT**

There being no further business to come before Council at this time, BY MOTION REGULARLY ADOPTED, THE MEETING WAS ADJOURNED AT 10:37 P.M.

APPROVED BY:


Susan Osborne,
Mayor

ATTEST:


Alisa D. Lewis,
City Clerk